

Remarks

Claims 1-36 are pending and at issue in the present application.

Applicants traverse the rejection of claims 1, 12, 13, 17-19, 30, 31, 35 and 36 as anticipated by Thieman, U.S. Patent No. 5,956,924 (hereinafter "Thieman"). Applicants further traverse the rejection of claims 2-11, 14-16, 20-29, and 32-34 as obvious over Thieman.

Claim 1, and claims 2-18 dependent thereon, specify a method of producing plastic bags comprising the steps of folding a web of plastic to form an elongate folded web having free ends and securing closer tape to the free ends of the elongate folded web. End stops are formed in the closer tape at spaced locations thereof, wherein the step of forming the end stops includes the step of creating an indicia in each of the end stops, and wherein the indicia designates at least one of a production line that produced the plastic bags and a time at which the bags were produced. The elongate folded web is simultaneously severed and sealed at each of the spaced locations to produce individual bags.

Claim 19, and claims 20-36 dependent thereon, recite a method of producing a plastic bag including the steps of folding a web of plastic to form an elongate folded web having free ends and securing closer tape to the free ends of the elongate folded web. First and second end stops are formed in the closer tape at spaced locations thereof, wherein the step of forming the first and second end stops includes the steps of welding portions of the folded web together at first and second areas adjacent the first and second end stops, respectively. The method further includes the step of creating an indicia in at least one of the first and second areas and the first and second end stops, wherein the indicia designates at least one of a production line that produced the plastic bags and a time at which the bags were produced. The elongate folded web is simultaneously severed and sealed at each of the spaced locations to produce a bag.

① Thieman does not disclose or suggest creating indicia in an end stop, where such indicia designate at least one of a production line that produced the plastic bags and a time at which the bags were produced, as specified by the claims at issue. In fact, Thieman discloses a method of producing plastic bags in which fastener strips are secured to free ends of a

folded web of plastic. Portions of the length of the fastener strips are heat sealed to form corner seals and end stops at various locations along the fastener strips.

According to the present invention, the indicia created in the end stops can identify the production line that produced the bag and/or a time at which the bag was produced. Such information, especially in the case of faulty bags, can be used to identify and effectuate rapid repair of the production line that produced the faulty bags. This ability, in turn, can minimize waste and reduce uneconomic downtime of the production line. Because Thieman does not disclose or suggest the creation of such indicia in end stops, he does not even contemplate the advantages provided thereby.

The critical question in determining patentability of printed matter is whether there exists any new and unobvious functional relationship between the printed matter and the substrate. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The stated object of the invention in *In re Gulack* was to exploit certain arithmetic properties of all prime numbers larger than 5 and to create the semblance of magic with respect to the numbers' location on a circular band. The band served two functions: it supported the sequence of digits and it presented the digits as an endless sequence with no discrete beginning or end. The court, in that case, rejected the board's conclusion that there was no functional relationship between the printed matter and the substrate of the appealed claims, stating that such a relationship did exist. *Id.*

A similar case, *In re Miller*, 418 F.2d 1392, 164 USPQ 46 (CCPA 1969), was directed to a measuring receptacle having quantitative indicia thereon. The purpose of the indicia is to assist in adjusting the ingredient measurements in a recipe when a fraction or multiple of the recipe is used. The court found that there was, in fact, a new and unobvious functional relationship between the measuring receptacle, volumetric indicia thereon indicating volume in a certain ratio to actual volume, and a legend indicating the ratio.

As an additional example, the PTO Board of Patent Appeals and Interferences in *Ex parte Ralph B. Brick*, Appeal No. 2000-1794, Application 08/901,171, found a functional relationship sufficient for patentability to exist. The invention related to a well-known type of package assembly, such as that utilized by the popular "Hershey's Kisses" chocolates. The assembly comprised a wrapping material for covering an article and an elongate tape having a hidden portion disposed beneath the wrapping material and a visible gripping portion disposed externally of the wrapping material. The gripping portion of the tape contained a

first message and the hidden portion of the tape contained a second message, the second message being intellectually compatible with the first message. The second message became available upon unwrapping the wrapping material from the article. The Board voted that the claims of this invention recited a specific functional relationship between the first and second messages and the portions of the tape on which they reside.

Because Thieman does not disclose each and every step of the claims at issue, it follows that such claims are not anticipated thereby. Further, because none of the prior art discloses or suggests that it would be desirable or even possible to provide an apparatus to create indicia in an end stop, as specified by the claims at issue, it is evident that the claims are not obvious thereover. The prior art must disclose at least a suggestion of an incentive for the claimed combination of elements in order for a prima facie case of obviousness to be established. See *In re Sernaker*, 217 U.S.P.Q. 1 (Fed. Cir. 1983) and *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). Accordingly, the obviousness rejection should be withdrawn.

The claims have been amended to further define the subject matter for which protection is sought and not to narrow the claimed subject matter. The amended claims do not present new matter.

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For the foregoing reasons, reconsideration and withdrawal of the rejections of the claims at issue and allowance thereof are respectfully requested.

Respectfully submitted,

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